

From: Chuck Phillips
To: Microsoft ATR
Date: 1/23/02 1:43am
Subject: Microsoft Settlement

I am a software professional of 15 years, having written and supported applications for both Microsoft and competing products.

Dan Kegel would attempt to have loopholes in the Proposed Final Judgment closed as he describes in the following link:

<http://www.kegel.com/remedy/remedy2.html>

Admirable as his intent is, I must respectfully disagree with Mr. Kegel that it is possible, much less practical, to close all of the loopholes Microsoft will inevitably find and employ no matter how careful and well-intentioned and regardless of the technical or legal expertise of the person(s) involved in the attempt. As an experienced repeat offender, Microsoft is too adept for any specific prohibitions to achieve much more than changes in labeling, or worse, cosmetic design changes to products that increase not only the development costs for Microsoft, but also for independent developers of software for Microsoft's Windows as well as those who develop compatible alternatives.

Rather than attempt to restrict actions, I propose the following remedial actions be required:

1. A public acknowledgment, specifically including:
 - a. Microsoft's deliberately spreading false information regarding competing products.
 - b. Microsoft's deliberately introducing changes in interfaces for the specific purpose of rendering competing products incompatible.
 - c. Microsoft's effectively prohibiting resellers of Microsoft products from selling competing products.
 - d. A reminder these actions can, and have, been pursued in civil courts -- sometimes successfully.
 - e. A general commonsense warning that reliance on any business-critical product for which there is only one source can be detrimental to business continuity and profitability.

Apology optional. This public acknowledgment should include national advertising in the trade magazines most likely to be read by those who authorize purchases of Microsoft products. It should also include national advertising on the major television networks during periods of

relatively high viewership ensuring some large minimum number of people have viewed the acknowledgment.

2. A concise mandatory warning label on every Microsoft product that can be read prior to purchase as well as after the product is installed -- and made no less accessible or prominent than version and copyright information -- preferably in the same manner.

This would include a brief restatement of 1a, 1b, 1c, 1d and 1e. Brevity and simplicity of wording are essential. A lengthy epistle of legalese will be understood only by lawyers.

3. A deadline for implementing 1 and 2 above.
4. The above actions and quarterly reviews for compliance should continue for a period of five years starting from the beginning of compliance. Whomever is responsible for deciding compliance should solicit input from leaders in the industry including, but not limited to, competitors of Microsoft.

No other measures. No fines other than court costs, enforcement costs and the expense of implementing the above. In my humble opinion, Microsoft's gain by deception has been, and will continue to be, only effective so long as the deception is not well known and well understood by business leaders and the general public.

Also, it is my belief the people actually injured by Microsoft's deceptions are more likely to recover their losses in civil court via class action and individual lawsuits than by the changes likely to result from criminal prosecution. One objective of my recommendations is to lower the bar to civil remedies in the face of the considerable resources Microsoft can afford to unleash on the smallest, but well-founded, complaint.

Another objective is to correct the commonly held, but false, assumption that Microsoft has risen to its leadership position entirely because of the quality of its products -- the reason most commonly given for not considering alternatives to Microsoft in my fifteen years of experience in the industry. By warning Microsoft's potential clients as directly as practical, they are less likely to make "no brainer" decisions based on market share instead of merit.

The last objective is ease of enforcement. The advertisements and warnings are present or not. They either acknowledge the required points in the language of a layperson or they do not. Contrast with a prohibition where the spirit, if not the letter, can be violated with impunity if enough cosmetics are applied -- if the past is any indication.

Thank-you for your consideration,
Chuck Phillips

